

Introduced by Senator Speier

February 22, 2005

An act to add Article 6.5 (commencing with Section 110806) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to food.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Speier. Meat and poultry recalls.

The existing Sherman Food, Drug, and Cosmetic Law establishes requirements for the identification and branding of food, and provides for the administration of those requirements by the Food and Drug Branch of the State Department of Health Services, and, upon request of local agencies, for the administration of certain requirements by local health officers. Violation of this law is a crime.

This bill would require a meat or poultry supplier, distributor, broker, or processor that sells a meat- or poultry-related product in California that is subject to a voluntary recall requested or issued by the United States Department of Agriculture (USDA) to immediately notify the State Department of Health Services and to provide the department with a list of retailers that have received or will receive any product subject to recall that the supplier, distributor, broker, or processor has handled or anticipates handling.

The bill would authorize the department to notify appropriate local health officers and environmental health directors that a supplier, distributor, broker, processor, or retailer in the local jurisdiction has handled or received, or anticipates handling or receiving, a meat- or poultry-related product that is subject to a voluntary recall requested or issued by the USDA.

If the department makes that notification, the bill would require the department, local health officers, and environmental health directors to notify the public regarding recalled meat- and poultry-related products. The bill would prohibit notification from being made in the case of USDA Class III recalls, *and would require the exclusion from that requirement of the name or identifying features of the retailer if the retailer is a restaurant and it is determined that the contaminated product has not been served to the public and has been permanently removed from the restaurant's food supply.* By creating additional duties for local government, this bill would impose a state-mandated local program.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Food recalls are voluntary and federal agencies responsible
- 4 for food safety have no authority to compel companies to carry
- 5 out recalls—with the exception for the Food and Drug
- 6 Administration's (FDA) authority to require a recall for infant
- 7 formula.
- 8 (b) In January 2004, the President of the United States
- 9 identified the nation's food system as vulnerable to intentional
- 10 acts of terrorism (Homeland Security Presidential
- 11 ~~Directive HSPD-9~~ Directive/HSPD-9 Defense of United States
- 12 Agriculture and Food (January 30, 2004).

(c) According to the United States Government Accountability Office's (GAO) analysis of recalls in its October 2004 report on "Food Safety: USDA and FDA Need to Better Ensure Prompt and Complete Recalls of Potentially Unsafe Food," only 38 percent and 36 percent of recalled food was ultimately recovered in recalls overseen by USDA and FDA, respectively.

(d) According to the same GAO report, "the USDA and FDA do not know how promptly and completely the recalling companies and their distributors and other companies are carrying out recalls, and neither agency is using its data systems to effectively track and manage its recall programs."

(e) In 2002, the State Department of Health Services signed a federal Memorandum of Understanding (MOU) with the USDA, which prevents state and local health officials from properly notifying the public that recalled products are potentially harmful and should not be consumed.

(f) For example, health officers were advised during the USDA recall of beef issued last December that due to the MOU, data about which retailers had received the potentially contaminated product could not be revealed to the consumer, no matter the seriousness of the outbreak.

(g) The State Department of Health Services has subsequently attempted to revise the current MOU, but has received no response from the federal government.

(h) Continued weaknesses in our current voluntary system for monitoring food recalls heighten the risk that unsafe food will remain in the food supply and ultimately be consumed.

(i) It is the intent of the Legislature to improve food recall and public notification procedures in the event of a USDA meat or poultry recall and protect California consumers from potential contamination in the event of a serious food outbreak.

SEC. 2. It is the intent of the Legislature that this act shall apply only to voluntary recalls requested or issued by the United States Department of Agriculture.

SEC. 3. Article 6.5 (commencing with Section 110806) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 6.5. Recalled Food

110806. (a) A meat or poultry supplier, distributor, broker, or processor that sells a meat- or poultry-related product in California that is subject to a voluntary recall requested or issued by the United States Department of Agriculture shall immediately notify the State Department of Health Services and shall provide the department with a list of retailers that have received or will receive any product subject to recall that the supplier, distributor, broker, or processor has handled or anticipates handling. The list shall include all pertinent identifying codes, including establishment numbers, package codes, product codes, pack dates, and lot numbers, if any, received or to be received, and any other relevant information. The information shall be electronically submitted to the department in a spreadsheet format specified by the department, and shall include, but not be limited to, a complete product distribution list of the recalled product, for each retailer, including product ship date, amount of product shipped and amount of any product returned.

(b) The department may, after receiving the information required by subdivision (a), notify appropriate local health officers and environmental health directors, as soon as practicable, that a supplier, distributor, broker, processor, or retailer in the local jurisdiction has handled or received, or anticipates handling or receiving, a meat- or poultry-related product that is subject to a voluntary recall requested or issued by the United States Department of Agriculture. The department shall, if it makes the notification authorized by this subdivision, provide appropriate local health officers and environmental health directors with each supplier's, distributor's, broker's, processor's, or retailer's name, address, contact information, affected product identifying codes, including establishment numbers, package codes, product codes, pack dates, and lot numbers, if any, and all other supply chain information available. The department shall not provide the notification authorized in this subdivision for a United States Department of Agriculture Class III recall.

(c) (1) If the department makes the notification authorized by subdivision (b), the department, local health officers, and

1 environmental health directors shall notify the public in a manner
2 local health officers, in consultation with the department and
3 environmental health directors, deem appropriate regarding
4 recalled meat- and poultry-related products based on their
5 determination that the retailer is present within the local
6 jurisdiction and has received or made the product available to the
7 public. The department, local health officers, and environmental
8 health directors shall not provide this notification for a United
9 States Department of Agriculture Class III recall.

10 *(2) If the retailer is a restaurant, and a determination has been*
11 *made by a local health officer or environmental health officer*
12 *that the contaminated product has not been served, sold, or*
13 *otherwise offered to the public for consumption, and the*
14 *contaminated product has been permanently removed from the*
15 *restaurant's food supply, then the public notification shall*
16 *exclude the name or any other identifying feature of the*
17 *restaurant.*

18 SEC. 4. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution for
20 certain costs that may be incurred by a local agency or school
21 district because, in that regard, this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.

27 However, if the Commission on State Mandates determines
28 that this act contains other costs mandated by the state,
29 reimbursement to local agencies and school districts for those
30 costs shall be made pursuant to Part 7 (commencing with Section
31 17500) of Division 4 of Title 2 of the Government Code.